

September 23, 2021

EO 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*
Industry Considerations and Concerns

Definitions (may be addressed all or in part as subsequent questions are considered)

- “performing on or in connection with” (Sec. 1)
- “contractor or subcontractor workplace locations” (Sec. 2.a)
- “strongly encouraged” (Sec. 6.b &c)

Applicability: are the requirements contract- or location-based?

- The EO expressly applies to contracts for ‘services, construction, or a leasehold interest in real property;’ it expressly does not apply to ‘subcontracts solely for the provision of products;’ does it apply to ‘contracts for the provision of products?’
- The EO expressly applies to new contracts, solicitations, extensions or renewals, and options; does it apply in any way to existing contracts/solicitations?
- If applied to current contracts, by what authority will contractors place these requirements on subcontractors/suppliers?
- Do the EO and new contract clause(s) apply to all employees whether or not they are directly or indirectly supporting USG contracts?
- If a company has employees working at the same business address but in separate buildings or spaces, with federal contracting activity separated from commercial activity, does the EO apply to all employees at the address?
- Does the EO and new contract clause(s) apply to all employees whether or not they are working remotely?
- To the extent that these requirements are site-based, do they apply to visitors to a covered site (e.g. guests/visitors, non-covered employees)?

Exemptions/Exceptions

- How are religious/health exemptions defined?
- Is an individual’s ‘exempt’ status permanent, or does it need to be renewed?
- How are religious/health exemptions adjudicated?
- How are religious/health exemptions to be documented and reported?
- Are employees who’ve had COVID-19 required to be vaccinated?

Vaccination

- Is self-attestation as ‘vaccinated’ acceptable; if not, what form of proof is required?
- How will vaccination status affect employment, and how is this addressed at various levels of employment; for union workforces; across multiple legal jurisdictions; at-will vs. contract employees; etc.?
- Is a certified lab report confirming natural antibodies acceptable in lieu of vaccination?



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Testing (for exempted employees)

- Tests vary in cost and accuracy; which tests are considered valid?
- With increased testing demand, is the government facilitating procurement of tests?
- How often must employees be tested; where; supervised or unsupervised?
- Does self-attestation constitute proof of testing, or is other documentation required?
- Is the individual, contractor or government responsible for documenting testing?

Costs

- Are these costs to be borne by the employee, the company, or the government:
 - purchasing testing kits and materials?
 - time off for employees getting vaccinations/tests?
 - additional staff, IT and other resources needed to track/implement?
 - compliance with masking, spacing, cleaning, and other mitigation protocols?
- If reimbursable, are there any unique requirements for cost collection and billing?
- Are contractors or the government be liable for employee disability or damage claims (side effects, etc.)?
- If contractors terminate employees who refuse the vaccination or refuse to report their vaccination status, will the contractors be indemnified for any related legal costs and claims?
- If implementation adversely affects contract delivery schedules or other contract performance, will DOD recognize these as Force Majeure Excusable Delays, or provide for other contract adjustments?
- How will DOD monitor and measure any productivity disruptions?

Implementation

- What is the implementation timeline after additional guidance and contract requirements are announced?
- Does forthcoming DoD guidance supersede all prior guidance and/or contract notifications?
- How does OSHA ETS (and other guidance) sequence with or overlap with DOD guidance?
- Does the OSHA ETS 100-employee threshold also apply under new DOD contracts requirements?
- How should contractors comply with the Privacy Act while implementing these requirements?
- Are contractors expected to violate or undermine collective bargaining agreements as they comply with these requirements?
- What contractor actions are expected or permitted if an employee refuses to comply with vaccination and/or testing requirements?
- Are employees terminated for non-compliance eligible for unemployment or other federal/state benefits?
- Can employees request leave under FMLA due to vaccination mandate-related stress? Are employers permitted to hire a replacement, or must they hold the position open?
- Will there be provisions, (e.g., grace periods) for extenuating circumstances (new hires, employees on emergency leave, etc.)?